MISSOURI
DEPARTMENT OF ECONOMIC DEVELOPMENT

FILM PRODUCTION TAX CREDIT PROGRAM

Application & Guidelines

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Film Production Tax Credit Program
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Film Production Tax Credit
Guidelines (Section 135.750, RSMo)

Effective August 28, 2005, and pursuant to Section 620.1900, RSMo, this tax credit program is subject to a fee of 2.5% of the amount of tax credits issued. Applicants will be invoiced for the fee after the tax credit application has been approved. Tax credits will be issued upon receipt of the fee.

The Missouri Department of Economic Development (DED) may issue a film production company state income tax credits equaling up to 50% of the company's expenditures in Missouri necessary for the making of a film, not to exceed $1 million in tax credits per project.

To Qualify: The film production company must spend $300,000 or more in Missouri (i.e., payments made to Missouri companies, organizations or individuals) in the making of the film. Only those Missouri expenditures that are necessary for the production of the film are applicable. Such expenditures may include, but are not limited to, the costs for labor, services, materials, equipment rental, lodging, food, location fees and property rental.

Uses of Tax credits: The tax credits may be applied against state income taxes (excluding withholding taxes) or financial institution taxes. They may be applied by the original recipient against such tax liability, or may be sold or transferred to another taxpayer and applied by the transferee against such tax liability. The credits may be used for the tax period during which they are earned, or may be carried forward for up to five additional tax periods.

Reservation of Tax Credits: The entire film production tax credit program is capped at $1.5 million per year. Because there is a finite amount of tax credits available, DED has established a procedure whereby tax credits may be set aside for a given film project by the submission of a pre-application form that provides estimates for the company's Missouri expenditures on the project. Based upon these estimates and any other relevant information, DED may reserve a given amount of tax credits for the project (for a given period of time). If it appears at any time that a project may be significantly delayed, then DED may review the project and, if warranted, reclaim those reserved credits, and apply them elsewhere.

In the pre-application form, DED will ask for estimates of the amount of money to be spent in Missouri, as well as projected dates for establishing the production office and the first day of principal photography. These dates will be used in determining the length of time for which tax credits may be reserved for the project, as well as the likelihood that the project will actually be produced in Missouri.

DED will evaluate each pre-application, and respond to the producer with an amount of tax credits that may be reserved for the project. It is possible that at the time of a producer's initial inquiry, all of the $1,500,000 in the tax credit program has been reserved by earlier projects. In that event, the producer will be informed of the next date when a review of one or more projects may be performed, and the possibility of tax credits becoming available for reservation on other projects. It is important to understand that the reservation of credits is not a guarantee that the applicant will receive the credits. It guarantees only that credits are available, and may be awarded once Missouri expenditures are verified by DED. Only after verification will DED certify the credits for delivery to the applicant.

Because the tax credit program is an incentive program, DED cannot award tax credits to producers who have already selected the state for their project. Hence, the reservation of credits for a project must be completed before Missouri has been selected as a location for the project. For the purposes of reserving tax credits, establishing a production office in the region is evidence that Missouri has been selected as a location for the project.

Verification of Expenditures: DED must be able to verify all items listed on the expenditures form that are to be applied to the tax credit program. The production company shall provide a spreadsheet of detailed Missouri expenditures along with the proof of purchases and proof of payments demonstrating that all expenditures were bought and paid to Missouri companies, organizations, or individuals. In addition, DED verifies that all expenditures were necessary costs incurred in the production of the project.

Delivery of Tax Credits: The actual certificates of state income tax credits may be delivered to the production company upon completion of the Missouri portion of the project and verification by DED of the Missouri expenditures. A transfer form will need to be completed if the tax credits are to be sold or otherwise transferred. Without submitting this form to DED, the Department of Revenue will not recognize the transfer.

DEFINITIONS

Business Entity Located in Missouri: Any sole proprietorship, partnership, limited liability entity or corporation with offices in Missouri more than 180 days prior to the start of a film production for which tax credit expenditures are being claimed.

Individual Located in Missouri: A person residing in Missouri more than 180 days before the start of a film production for which film tax credit expenditures are being claimed.

Missouri Expenditure: An expense for a product or service provided in Missouri that is a necessary cost for the production of a qualifying film production, for which remuneration is received by a business entity, organization or individual located in Missouri. Such expenditures may include, but are not limited to, the costs for labor, services, materials, equipment rental, lodging, food, location fees and property rental. Wages for an individual who is not a Missouri resident 180 days prior to the inception of the film project, interstate travel expenses and any other expenses incurred outside of Missouri are not Missouri expenditures.

NAICS (North American Industry Classification System): The Federal Office of Management and Budget (OMB) adopted the NAICS as the industry classification system used by the statistical agencies of the United States. NAICS replaces the 1987 Standard Industrial Classification (SIC). The NAICS is used for classifying business establishments to assist with gathering data related to measuring productivity, unit labor costs, and the capital intensity of production, employment and other information. Missouri businesses are assigned a NAICS when the company files a "Report to Determine Liability Status" with the Missouri Department of Labor and Industrial Relations, Division of Employment Security to determine Unemployment Tax Liability. Normally, a general business employer becomes liable for the tax and responsible for providing unemployment insurance for its workers when it:

- Pays $1,500 in wages (cash and in-kind) in a calendar quarter, or
- Has an employee in some portion of a day in each of 20 different weeks, or
- Becomes liable under the Federal Unemployment Tax Act (FUTA) and employs a worker in Missouri, or
- Acquires and continues without interruption substantially all the business of a liable employer.

Necessary Costs: Money actually paid for items that are consumed in the production of the project, less any salvage, resale or residual value. Such items may include, but are not limited to, the costs for labor, services, materials, equipment rental, lodging, food, location fees and property rental. All such costs must be reasonable and within accepted industry standards.

Organization Located in Missouri: Any non-profit organization in existence in Missouri for more than 180 days prior to the start of a film production for which tax credit expenditures are being claimed, and any public entity located in Missouri.

Pre-application: A form used at the beginning of the process of requesting the tax incentive, where an estimate of the proposed Missouri expenditures is provided by the producers of the film project. The estimates provided by the producers will be used to determine whether the project may meet the qualifying amount of $300,000 in Missouri expenditures, and in determining the estimated amount of tax credits that could be reserved for the project.

Project Review: The process by which DED examines the estimates provided in the pre-application form and any other relevant information to determine the likelihood of the film project qualifying for Missouri film production tax credits. Such reviews may be performed periodically on each project, or at any time when new information indicates a likelihood that a project will be delayed.

Proof of Payment: Receipt; check (cancelled, front and back); bank statement (for debit card transactions); or credit card statement (for credit card transactions).

Proof of Purchase: Invoice or receipt.

Reserved Tax Credits: Tax credits that DED has set aside for a project that has submitted a pre-application form demonstrating a likelihood of surpassing $300,000 in Missouri expenditures. Such reserved credits may be rescinded upon a subsequent review of the project that results in a finding that the project is not likely to qualify for the reserved credits within the time scheduled for the project.

TAX CREDIT ACCOUNTABILITY

The Tax Credit Accountability Act of 2004 (Senate Bill 1099, Sections 135.800 through 135.830, RSMo) makes several changes to the tax credit programs, specifically:

- Processing tax credit applications,
- Annual reporting requirements, and
- Penalty provisions.

Changes in Processing of Tax Credits (Section 135.815, RSMo)
Prior to the Missouri Department of Economic Development (DED) authorization of a tax credit, DED will contact the Department of Revenue and the Department of Insurance to verify the applicant does not owe any delinquent income, sales, use, or insurance taxes, or interest or penalties on such taxes. If a delinquency exists, the amount of tax credits issued will be reduced by the amount of the delinquency. After satisfying all delinquencies, the remaining credits shall be issued.

REPORTING

Tax Credit Accountability Act -- Reporting Requirements (Section 135.805, RSMo)
Certain tax credit recipients are required to annually report to DED information pertaining to the project that received the tax credits. The statute requires a full year to pass after the issuance of tax credits before SB 1099 reporting requirements must be met. The earliest date that SB 1099 reporting requirements may be required is June 30, 2006.

The Business Recruitment category of tax credits, which includes the Film Production Tax Credit Program, requires recipients to annually report to DED for three (3) consecutive years following the date of the issuance of tax credits the following information:

- Category of business by size
- Address of the business headquarters
- Addresses of all offices located within this state
- Number of employees at the time of the annual update
- Updated estimate of the number of employees projected to increase as a result of the completion of the project
- The estimated or actual project cost.

Penalty Provisions (Section 135.810, RSMo)

Failure to meet the annual reporting requirements or any determination of fraud in the application process, if determined by a court, such person or entity shall be subject to penalties.

- If the annual report is ninety (90) days past due, DED shall send notice by registered mail to the last known address of the person or entity who is required to complete the annual report. The notice shall inform the person or entity of the past-due report, the pending penalties and their respective deadlines.

- If the annual report is six (6) months past due, DED shall notify the Department of Revenue that the taxpayer is subject to penalties because of failure to report.

Such penalties include the following:

- Failure to report for six (6) months but less than one year shall equal a penalty of two percent (2%) of the value of the tax credits issued for each month of the delinquency.
  EXAMPLE: Recipient receives $10,000 in tax credits. Annual report is due June 30, 2006, however, the recipient does not submit the report until March 30, 2007. The recipient is nine (9) months delinquent and the penalty would equal 2% multiplied by $10,000 for nine (9) months or $1800.
- Failure to report for more than one (1) year shall equal a penalty of ten percent (10%) of the value of the credits issued for each month of the delinquency, not to exceed one hundred percent (100%) of the tax credit value.
  EXAMPLE: Recipient receives $10,000 in tax credits. Annual report is due June 30, 2006, however, the recipient does not submit the report until March 30, 2008. The recipient is twenty-one (21) months delinquent

and the penalty would equal 10% multiplied by $10,000 for twenty-one (21) months or $21,000, however, the statute limits the penalty to the amount of the tax credits, therefore the penalty would be $10,000.

The taxpayer shall be liable for any penalties as of December 31 of any tax year and the liability shall be due as of the filing date of the taxpayer's next income tax return.

If the taxpayer is not required to file an income tax return, the taxpayer's liability for penalties shall be due as of April 15th of each year.

The Director of the Department of Revenue shall offset any tax credits claimed on a filed tax return against an outstanding penalty before applying such credits to the tax year against which they were originally claimed.

Any nonpayment of liability for penalties shall be subject to the same provisions of law as a liability for unpaid income taxes, including but not limited to, interest and penalty provisions.

Penalties shall remain the obligation of the person or entity obligated to complete the annual report without regard to any transfer of the credits.

Closed Records (Sections 610.255 and 620.014, RSMo)
Before August 28, 2004 and pursuant to Section 620.014, DED had the authority to close certain records except for the name of the tax credit recipient and the amount of the tax credit. SB 1099 removes this broad exception but DED retains the authority to close records or documents that "relate to financial investments in a business, or sales projections or other business plan information which may endanger the competitiveness of a business" or as also allowed by law.

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